



**2012**

}

.{

.



1		
	:	
6		1.1
7		1.1.1
16		2.1.1
		3.1.1
29		
31		2.1
31		1.2.1
35		2.2.1
		3.2.1
38		
	:	
41		1.2
42		1.1.2
		2.1.2
50		
54	"	" 2.2
56		1.2.2
57		2.2.2
61		3.2
61		1.3.2

63	2.3.2
64	3.3.2
66	4.2
66	1.4.2
67	2.4.2
68	3.4.2
	:
71	1.3
73	1.1.3
78	2.1.3
80	3.1.3
84	2.3
84	1.2.3
86	2.2.3
97	3.3
102	
107	

**2012**

.

.

—

—

.

•

**Abstract**  
**Provisions Governing the Limits of the Penalty of Physicians' liabilities**  
**in the Scope of Disclosing Medical Secrets in both Saudi and Jordanian**  
**legislations**

**Abdullah Al-Harbi**

**Mu'tah university, 2012**

There is no doubt that the nature of the doctor's work allows him to be introduced to lots of information and secrets concerning the disease the patients suffer from. The trust built between the doctor and his patient will encourage the patient to share the doctor with his secrets.

Therefore, the researcher herein refers to the governing provisions of the limits of the doctor responsibility concerning the disclosure of medical secrets in both Saudi and Jordanian legislations, to focus on some legal issues, especially which concerns medical secrets, which once it has been disclosed; the doctor becomes responsible according to the Jordanian and Saudi legislations. The researcher also studies the cases where the doctor avoids responsibility according to both of the legislations being compared in this study. This study comes in three chapters. The first chapter deals with the nature of the Medical Secret and its legal origins and limitations, while the second chapter tackles the range of the medical secret and its limitations. The third chapter focuses on explaining the cases where the doctor may be free from charge for disclosing medical secrets.

The penalty policy made by the Saudi Legislation is too lenient according to the researcher, i.e. by which setting fine that does not exceed SR 2000 is not commensurate with the damages that resulted from disclosing such a medical secret. That is the trustworthiness of a doctor, who knows all the details of the patient's illness, as disclosing the disease secret is an issue that can't be impinged. Therefore, the Saudi Legislation has to have a second thought about this crime in order to change the penalty policy imposed by the legislator.





.

.

.

.

.

355  
- 1 : )

- 2 .

- 3 .

.(

24-22

22

.

) 23

24 .(

-)

.

- .

-

- .

- .

- .

- .

- .

.(

21

1426/4/11

59/

)

( :

:

-2

-3

( .

.(

( .

:

⋮

⋅

⋅

⋅

⋅

⋮

⋅

⋅

⋮

⋮

⋮

.

.

.

(1)

.

.

.

.

.(1941)

(1)

.655

11

.

(1) .

"

"

:

(2)

1.1

.

.

(3)

.

.

\_\_\_\_\_

(1986) (1)

.75

.(1980) (2)

.81-80

.(1997) (3)

1981

. 40

### 1.1.1

.

(1)

.

:

:

le " "

:

L'agurveda " " Regveda

(2)

.

(3)

.

" "

" :

.

.30

(1)

.7

(2)

.(1950)

(3)

. 465

(1)

) :

—

.(

(2)

(3)

Faux

<sup>(4)</sup>Pervaricateur

---

.Signer: A short history of medicine exford 1928 , p.28 (1)

. 7

.(1993) (2)

. 14

. 657 (3)

.657 (4)

.10

"

(1)"

.

.

(2) Tribunal de la penitence

.

.

" "

" (3)

.

.

"

.

"

1599

"

.

:

.

---

Louis pimienta: Le secret professionnel de l'avocat 1937 p10 (1)

.10

.13

(2)

. 38

(3)



(1)»  
.

(2)» :

1311

Philippe Le Bel

(1

Jean Premere

(2

. 1311

1352

1966

(3

. 38

---

(1)

..13

(2)

1947

(1)

378

1810

.13/226

(2)

1974

234

-

"

-

"

"

.

---

Voir; Article 4 du Code de Déontologie: "Le secret professionnel, (1)  
institute dans l'intérêt des patients, s'impose à tout médicale danse les  
conditions établies par la loi. Le secret couvre tout cue qui est venu à la  
connaissance du médecin danse l'exercice de sa profession, c'est à dire  
non seulement ce qui lui a été confié mais aussi ce qu'il a vu, entendu  
(2004) .ou compris"

.(. .)

Article 9 du cod civil, L.N. 70-643, du 17 juill, 1970.(2)

.11

) 20

.(

) 310

.....

.(....

:

:

.

(1)

.

.

:

:

**-1**

)

-

-

-

-

.(

-

.(

)

-

-

-

( 1425)

(1)

.145

(1)

(2)

— —  
:  
)  
.(

.

.

(3)

— —  
" —

(4)"

26

---

.(1969) (1)

.56 (2)

.3 (3)

— .(1999) (4)

.167 1

— " — —

— :

(1)"

— }

(2){

— ) —

.(

(3)

— —

— :

— :

(4) ( ) — — :

(5) (

(6) :

(

		(1952)	(1)
		.212	
		.49	(2)
		.212	(3)
		.49	(4)
		.189	(5)
141-140	26		(6)

(1)

: -2

(2)

(3)

(4)

.141-140	26	(1)
.35		(2)
	.72	(3)
.		(4)

### 2.1.1

•

•

•

•

•

$$\vdots$$

•

•

:

(1)  $\parallel$

11

(2)

— — —

(3) {

}

:

•

•

. 328

$$7 \quad (1986) \quad (1)$$
$$(1972) \quad (2)$$

2

$$.7 \quad (3)$$

(1)

.

:

:

.

:

**-1**

(2)

.

.

"

"

(3)

.

. 659

(1)

(2)

.(1987)

.42

4

. 473

(3)



(1)

.

:

-2

(2)

"

Hemar

(3)"

.

.

---

(1)

. 659

.153

(2)

Hemar: le secret médicale au point de vue de la revelation des crimes (3)  
et de delit, Rev critde legis et de jurist t.xxxu p. 361.

.46

(1) .

(2)

(3)

" "

1902 Aix

(4)

378

"

---

.155 (1)

.5 (2)

Cass 19 Dec 1885 D. 1896-1347 (3)

. 50

. 50 (4)

(1)

-3

"Littré

(2)

---

.Cass D, 1951-1-363, Rev science crim 1951 p 532 (1)

Cour d'Aix la mors 1902 D.p 1903 -2-

.50

65

(2)

(1)

.

:

**-4**

"

-

(2)

-

"

.

-

-

-

.

.54

(1)

(2005)

.28

.(1986)

(2)

. 753 1016

(1)

.

.

.

.

.

.

.

.

.

.

.726

(1)

.630

.(1992)

.159

(1)

.

.

.

.

.

.

.

.

.(1986)

(1)

.727

(1)

.

.

.

—

—

.

:

.

**-1**

—

.(1988)

(1)

.266

.153

“(1)”

“(2)”

“(3)”

1899

---

.31	(1)
(2004)	(2)
.60	
.61	(3)



(1)

1986/3/18

(2)

---

.Cass. Civ. 1 Mai 1899, D. 1899, Tables – Rév.615 (1)

.33

Cass. Civ. 18 Mars 1968, J.C.P. 1968 – 11 – 20629 (2)

.35

(1)

(2) .  
.

**-2**

(3) .

.

.

32

---

(1)

.62

.78

(2)

.66

(3)

.

.(1)  
.

:

.

:

.

.

1936/7/13

.(2)

(3)

.

.36

---

(1)

. Cass. Civ. 13 Juill 1936, Note legal, J.C.P.1936 – 11 – 18.

(2)

.81

(3)

3.1.1

(1) 37 . )

.(

.

.

(2) 355 )  
- 3 .- 2 .- 1 :  
.(

.2001	37	52	30	(1)
12		1960	16	(2)
				.2010

24-22

22

) 23

.

24 .(

.

21

1426/11/4

59/

)

.

-

-

(1)

.

(2)

"

23

21

"...

.

**2.1**

.

**1.2.1**

.

160

.71

(1)

.71

(2)

.

.

(1)

(2)

.

.

.

.

.

.

.(3)

.1

.

"

"

.2

"

871

(1990)

(1)

.82

192

.14

(2)

45

(3)

.14

80

"

" "

.

.3

.

.

.4

868

"

"

(1)  
.

"

"

"

"

.5

(2)  
.

.

(3)  
.

833

.11

.77

833

---

(1)

(2)

(3)

83

:



·  
(1)

·

(2)

(3)

·

·

(4)

"

"

·

---

.89	(1)
-----	-----

.89	(2)
-----	-----

. 86	(3)
------	-----

. 86	(4)
------	-----

203

"

"

:

(1)

.

.

.

.

.

(2)

.

**2.2.1**

(3)

.

.11

(1990)

13

(1)

(2)

.132

.90

(3)

49

132

.

.

.

.

(1)

.

(2)  
.

.(3)  
.

132

. 90

51

.95

---

(1)

.94

(2)

.97

(3)

-1

-2

(1)

-3

(2)

-4

.106

.18

(1)

(2)

3.2.1

·  
:  
:  
- -

22 ·  
21  
· 1426/11/4 59/

·  
·  
- -  
·  
·  
·

:

-

-

-

30

355

.

22

.

" "

" "

(1)

.

(2)

.

.

355

.(1987)

(1)

.475

—

. 751

(2)

)

:

.(

- 3

-22"

"24

.

)

(1)

21

.(....

.

.

.

**1.2**

(2)

1426/4/11

59/

(1)

. .266

(1)



.<sup>(1)</sup> (Actus Reus)

:

.<sup>(2)</sup>

.

## 1.1.2

.

.(2005)

(1)

.(2002)

268

.203

.(2010)

(2)

2012

:

.

.

.

(.. )  
21

.( )

.(1)

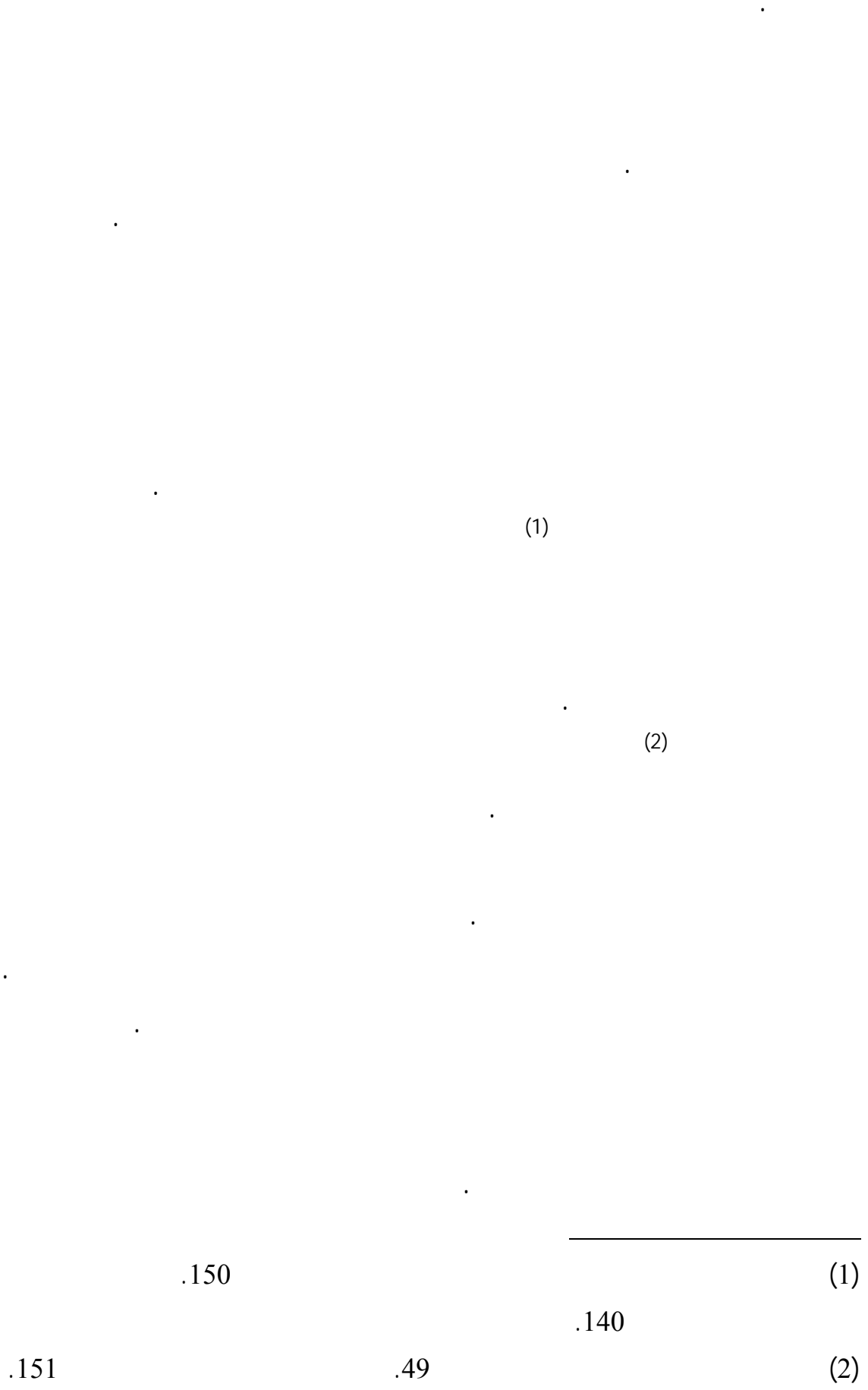
.(2)

- .( ) 

---

 (1)

.172 .855 (2)



(1)

Les faits sont secrets par .

(2)

nature

.

.

.

21

3/355

21 (..... )

3/355

( )

.

.154

(1)

.(1978)

.695 48

.695

.155

(2)

:

(1)  
.

(2)  
.

.

(3)  
.

.33

.(1986)

.465

.171

. 854

153

.48

.26

46

(1)

(2)

(3)

<sup>(1)</sup>1952

# Grenoble

473

. 159

85

(1)

22

...)

.(

(1)

.Negative

Afirmative

---

GULPHE (Pierre): Le secret Professionnel du Banquier en Droit (1)  
Francais et en Droit Comparé Rev. Trim. Dr. Comm. 1948, P.10 et.s;

.GARCON (Emile). Code Penal Annote, Tome 11, Paris 1956, P. 520  
Cass. Req. 18 juill 1904. D.P 1905 1 . 43. Cass. Civ. 29 mars 1927 D.P  
. 1927 1 185.

(1988)

474

.19

—

21

355

21

355

21

".

"

355

(.. )

.475

---

(1)



.  
 " " "  
 "

.

(1)

.

## 2.1.2

(2)

.

.

		.758	(1)
.(1958)		.36	(2)
	.393	1	

:

21

355

.

.

(1)  
.

—

—

(2)

.

.406

(1)

236

(2)



—

.

—

(1)

.

:

:

(2)

.

.

(3)

.

...

...

:

. ...

...

...

.

.

.113

(1)

.458

(2)

.476

(3)

(1)

.

.

"

"

**2.2**

"

"

(2)

.

.

(3)

.

.69

(1)

(2)

.(1973)

.54

. .

326

–

(1996)

(3)

.59

1

(1)

.

.

.

.

"

"

1969

46

.

.

.

.

.44

(1)

.  
 :  
 .  
 :  
 .

### 1.2.2

355  
 (... )

(1)

- -

( )

.

.  
 \_\_\_\_\_  
 .(1996) (1)  
 .231

.

. . . .

.

.

### 2.2.2

21

"

"

)

:

"

"

.(

(

)

.



.

.

(1)

.

(2)

.

355

.463

(1)

.662

1

.(1991)

(2)

.146

21

" ...

"

.

21

.

(1)  
.

(2)

.

(3)

.

.233

.46

.468

.186

---

(1)

(2)

(3)

.

.

.

.

(1)  
.

.662

---

(1)

3.2

(1)  
.

.

.

1.3.2

63

:

74

.

(2)u

.

.( . )

(1)

.9

—

.327

(2)

(1)

.

.

.

.

:

:

.

.

1/86

.

:

:

. .235

---

(1)

(1)

85

(2)

**2.3.2**

(3)

.662

.411

.773

. .539

.235

(1)

(2)

(3)

(1)

.

.

(2)

.

### 3.3.2

(3)

.

67

: )

.(

.

---

.(1987)

(1)

. 206

–

.(1989)

.478

(2)

.166

–

.413

(3)

.433

(1)

.

"

(2)"

.

.

.

.

(3)

.

.

(4)

.

.

---

.(1986) (1)

. 165 12 1

.668 1900/3/28 (2)

Vi del-j, et earlotti-J- "le Risons morales du secret médicale (3)

.165

BESSON (A). les secret de la proco'dure p'enal et ses In ceden ces D (4)  
1954 p81



:

## 1.4.2

355

)

.(

...

355

.

71

.

)

(

.355

" "

"

"

.

80 76 75

(2 / 81)

)

.(

.482

18 1967

20

.400

.166

1989

(1)

.

.

99

.

**2.4.2**

21

.

30

)

.(

—

.

414

(1)

-

.

### 3.4.2

" "

45

)

.(

32

)

.(

)

:

. .1

. .2

.3

.

.(

.

.

(1)

.

.

.

.90

---

(1)

(1) .

.

**1.3**

)

355

- 1 :

- 2 .

- 3 .

.(

24-22

22

.(2009)

(1)

.145

.

) 23

24 .(

-)

.

- .

-

- .

- .

- .

- .

- .

.(

(1)

21

)

/):

-1 :

-3

-2

/ .

/ .

.(

. 1426/11/4

59/

(1)

:

### 1.1.3

"

"

"

"

:

(1)

.

(2)

"

.

.653

(1)

.242

(2)



”

.(1)”

.(2)

- -

70 37

---

1924/12/16 (1)

.68

.565

321-2-1905 1903/6/12 (2)

(1)

11

(2)  $\parallel$

(3)<sub>II</sub>

(4)<sub>II</sub>

(5)

11

• • •

66

)

.( ...

)

.(...

(1)

.(1973)

(2)

.148

(3)

(4)

(5)

(1)

.

37

3/355

)

1952

30

.(

(2)

.

)

/21

.(

.497

.667

(1)

. 10

842

1940/12/9

.242

(2)

(1)

(2)

(3)

---

.674 (1)

.Cor d,app. Lyon – 16-6-1909. S.1901-2-73 (2)

.74

.207 (3)

(1)

(2)

### 2.1.3

(3)

.250 5

---

1938/4/21 (1)

.182

: (2)

.587-575

.234

.62

.74

.183

(3)

— (1)

.

3/ /21

)

.(

.

.

(2)

64

(1)

.210

.204

1966

(2)

(1)

### 3.1.3

(378)

(2)

.65

1965/10/20

(1)

.515

(2)

378

(1)

(2)

—

—

(3)

.514

.60

.665

---

(1)

(2)

(3)



(1)  
.

L.11

L.225

.

(2)  
.

.

1971

21

/12

)

.(....

12

24

"

" "

"

.

.670

---

(1)

.681

(2)

.208

355

$$\begin{array}{l} (1) \\ \cdot \\ (2) \\ \cdot \end{array}$$

83

2.3

.

1.2.3

(1)

.

.

.

(2)

.

.489

(1)

L.11

.671

(2)

L.225

.

HERVE et MOUTEL; les drogations du ) .

) /12

.(.... 12

2/ /21

)

.(

.

---

.681

.secret, art. Prec. N.4.2.2.1

.(.492

1990 27

30

.

1946

)

(682

.

.

.

### 2.2.3

.

:

.

.

(1)

.

.

(2)

.

244

.

.( ) (1)

.9

.90

492

(2)

)

247

.(

378

378

.

310

:

(1)  
.

.

.

/23

.

.

102

---

(1)

.(1)  
.

:

.  
"

" 378"  
"

.(2)

:

.(3)

(4)

14

.	56		(1)
	.92		
.513		1909/1/29	(2)
		.533	
.107	.381		(3)
	.45		
	.514		(4)

(1)  
.

(2)  
.

.

.

.535

.676

---

(1)

.514

.672

(2)



(1)

.

.

.

:

:

(2)

.

.

.

.

(3)

.

3/355

—

.640

(1)

.(2004)

(2)

.104

.167-166

(3)

1/214

.

37

.

)  
(.

" /1/216"

.

3/355

(1)

.

)

/21

(

.239

(1)

.

.

:

:

.

1-3-226

1-4-226

.

.

-

-

(1)

62

(2)

84

(

)

)

98

90 89 87

-

- 93 92 91 90

88

.(

98

1992 97

.

98

98 84

(3)

---

Voir; Article 225 – 14 "L'article 226-13 n'est pas applicable dans le cas (1)

ou la loi impose ou autorise la .....

158159

.88 (2)

.446 (3)

) 26 .

.(

26

.

310

26 25 .

66

.(

.

(1)

.559

.446

---

(1)

.

.

"

"

.

....

3/355

.( ....)

) 25

1961

9

..(...

4/207)

.

-3)

(3

-4 .

.(

(1)

.

)

(2)

37

.237

.1952

(30)

(1)

(2)

.(...

.

.

1/ /21

)

.(

"

"

.

"

"

"

"

.

"

"

:

:



143

19

1994

(1)

: 14

-1

-2

-3

-4

-5

:

:-

-

-

-

..

.2002

(17)

(1)

·  
(1)  
·  
17  
)

·( (15) ( )

· « »  
: :

·  
·  
" "

(2)  
·

: .513 (1)

·  
.597-596 (2)

(1) .

1994            143            35

.

.            48            53

"            50

"

"

"

(            )            (            )

.

.597-596            

---

 (1)

( - )

.

:

.

:

(1

.

(2

-

-

.

(3

37

(4

(5

(6

21

3/355

(7

(8

( )

)

(

.

37

(9

)

/21

.(

(10

.

(11

.

.

:

(1

.

.

(2

—

—

.

(3

3/ /21

.

(4



·  
(5

·  
(6

-

.(1959)

.

.(1999)

.1 -

.

.(1978)

.695 48

.2

( 1972)

.(1973)

. -

(1990)

.

.(1997)

56-38

1981

.

( 1425)

145

.

.(1950)

.

.(1950)  
 .  
 .( . ) 1  
 .(1991)  
 (2005)  
 .  
 .( )  
 .  
 .(1986)  
 .  
 .( . )  
 . —  
 .(1989)  
 . —  
 .(1987)  
 . —  
 .(1986)  
 .  
 (1996)  
 .1  
 .(1986)  
 .166-165 12 1  
 .(1969)  
 .72-56 26  
 — .(1986)  
 . —

.(1996)

.(2002)

.(1980)

( . )

.( . )

.(1992)

1 .(1973)

— .(1988)

.(1987)

(2004)

.( . )

(1990)

(1988)

1 .(1958)

.(1987)

.(1952)

.(2004)

.(2009)

.(1986)

.(2010)

.(1941)

11

.682-655

7 .(1986)

.(1993)

: -

Hemar: le secret médicale au point de vue de la revelation des crimes et de delit, **Rev critde legis et de jurist** t.xxxxu

BESSON (A).(1954 ) **les secret de la proco'dure p'enal et ses** In ceden ces D

GULPHE (Pierre): (1948) Le secret Professionnel du Banquier en Droit Francais et en **Droit Comparé Rev.** Trim. Dr. Comm.

GARCON (Emile).( 1956) **Code Penal Annote**, Tome 11, Paris

Louis pimiento(1937): **Le secret professionnol de l'avocet** p10

Vi del-j, et earlotti-J- **"le Risons morales du secret médicale**